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5                   UNITED STATES DISTRICT COURT  
6                   WESTERN DISTRICT OF WASHINGTON  
7                   AT SEATTLE

8                   PLAINTIFF PACITO; PLAINTIFF  
9                   ESTHER; PLAINTIFF JOSEPHINE;  
10                  PLAINTIFF SARA; PLAINTIFF  
11                  ALYAS; PLAINTIFF MARCOS;  
12                  PLAINTIFF AHMED; PLAINTIFF  
13                  RACHEL; PLAINTIFF ALI; HIAS,  
14                  INC.; CHURCH WORLD SERVICE,  
15                  INC., and LUTHERAN COMMUNITY  
16                  SERVICES NORTHWEST,

17                  Plaintiffs,

18                  v.  
19                  DONALD J. TRUMP, in his official  
20                  capacity as President of the United  
21                  States; MARCO RUBIO, in his official  
22                  capacity as Secretary of State; KRISTI  
23                  NOEM, in her official capacity as  
                    Secretary of Homeland Security;  
                    ROBERT F. KENNEDY, JR., in his  
                    official capacity as Secretary of Health  
                    and Human Services,

Defendants.

CASE NO. 2:25-cv-255-JNW  
ORDER DENYING MOTION TO  
DISMISS

## 1. INTRODUCTION

This matter comes before the Court on the Government's motion to dismiss Plaintiffs' First Supplemental Complaint for failure to state a claim and for lack of subject-matter jurisdiction. Dkt. No. 115. Having reviewed the briefing, the record, and the law, the Court, being fully informed, finds that Plaintiffs have adequately pled their claims and established the Court's jurisdiction. For the reasons explained fully below, the Government's motion to dismiss is DENIED. Dkt. No. 115.

## 2. BACKGROUND

Because the Government mounts a facial attack under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (*see infra* § 3.1.1), the Court accepts as true the allegations set forth in the operative complaint. Dkt. No. 56 (First Supplemental Complaint).

The factual and legal background of this case, including the statutory framework of the Refugee Act of 1980, the United States Refugee Admissions Program (USRAP) Executive Order, and agency implementation of the USRAP EO, is comprehensively set forth in the Court’s prior orders. *See* Dkt. No. 45 at 3–17 (describing the Refugee Act, USRAP EO and agency implementation of the EO, and Plaintiffs’ experiences); Dkt. No. 79 at 3–6 (additional factual development).

In brief, Congress enacted the Refugee Act in 1980 to provide a “permanent and systemic procedure” for the admission and resettlement of refugees in the United States. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 § 101(b). The Government fulfills this statutory mandate through USRAP, a multi-agency effort administered by Department of State (DOS) through the Bureau of Population,

1 Refugees, and Migration (PRM); Department of Homeland Security (DHS) through  
2 U.S. Citizenship and Immigration Services (USCIS); Department of Health and  
3 Human Services (DHHS) through the Office of Refugee Resettlement (ORR); the  
4 United Nations (UN) through the UN High Commissioner for Refugees (UNHCR)  
5 and International Organization for Migration (IOM); and through cooperative  
6 agreements, as authorized under 31 U.S.C. § 6305, with nonprofit partners,  
7 including Resettlement Support Centers (RSCs) abroad and domestic Reception and  
8 Placement (R&P) service providers. *See* Dkt. No. 56 at ¶¶ 31–77.

9 On January 20, 2025, President Trump signed Executive Order No. 14163,  
10 “Realigning the United States Refugee Admissions Program,” 90 Fed. Reg. 8459  
11 (“USRAP EO”), which under the purported authority of 8 U.S.C. §§ 1182(f) and  
12 1185(a)(1), suspended all “entry into the United States of refugees under the  
13 USRAP” effective January 27, 2025. USRAP EO § 3(a)–(b). The USRAP EO requires  
14 reports to the President every 90 days on whether resumption would serve U.S.  
15 interests until the President determines resumption is warranted and creates a  
16 case-by-case exception mechanism. *Id.* § 4; § 3(c). Immediately following the USRAP  
17 EO, the Agency Defendants began implementing what this Court terms the “Agency  
18 Suspension”—suspending USRAP case processing, travel, and admissions. Dkt. No.  
19 56 ¶¶ 115–120.

20 On January 24, DOS issued “Suspension Notices” to USRAP resettlement  
21 partners, including Plaintiffs Church World Services (CWS) and HIAS, directing  
22 them to “stop all work” under cooperative agreements, “cancel as many outstanding  
23 obligations as possible,” and “not incur any new costs.” *Id.* ¶ 126. These notices cited

1 as authority not the USRAP EO, but Executive Order No. 14169, “Reevaluating and  
 2 Realigning United States Foreign Aid,” 90 Fed. Reg. 8,619 (Jan. 20, 2025) (“Foreign  
 3 Aid EO”), which announced a “90-day pause” on “foreign development assistance,”  
 4 and says nothing about refugees or domestic resettlement programs. *See id.*

5 On top of the Suspension Notices, DOS and DHHS also implemented a *sub*  
 6 *silentio* suspension of funding for R&P services, withholding reimbursements for  
 7 work already performed. Dkt. No. 56 ¶¶ 131–132. The Court refers to the noticed  
 8 suspension of USRAP agreements, together with the *sub silentio* suspension, as the  
 9 “Funding Suspension.”

10 Plaintiffs filed this lawsuit on February 10, challenging the USRAP EO,  
 11 Agency Suspension, and Funding Suspension, and moved for preliminary injunctive  
 12 relief. *See* Dkt. Nos. 1, 14. On February 25, the Court ruled from the bench,  
 13 preliminarily enjoining implementation of key sections of the USRAP EO. Dkt. No.  
 14 39. But the very next day—before the issuance of the written order—DOS issued  
 15 communications terminating all ten cooperative agreements for R&P services  
 16 (“R&P Termination”) and all but one cooperative agreement for USRAP processing  
 17 abroad (“Processing Termination”). Dkt. No. 56 ¶ 209. These “Termination Notices”  
 18 directed the recipients, “effective immediately,” to “stop all work on the program,”  
 19 “not incur any new costs,” and “cancel as many outstanding obligations as possible.”  
 20 *Id.* ¶ 216. The only explanation given was that the agreements “no longer effectuate  
 21 agency priorities,” and the only legal authority cited was “the U.S. Department of  
 22 State Standard Terms and Conditions, 2 CFR 200.340, and/or Award Provisions as  
 23 applicable.” *Id.* ¶¶ 214, 218. The Court refers to the R&P Termination and

1 Processing Termination, together, as the “Funding Termination.” The only RSC not  
2 subject to the Funding Termination was RSC Africa, run by Plaintiff CWS, which  
3 nonetheless remained suspended under the Funding Suspension. *Id.* ¶ 210.

4 On March 4, the Court held an emergency status conference to address the  
5 Funding Termination, after which it granted Plaintiffs leave to amend their  
6 complaint to allege these newly developed facts. *See* Dkt. Nos. 51, 54. On March 5,  
7 Plaintiffs filed the First Supplemental Complaint, which remains the operative  
8 pleading. Dkt. No. 56.

9 The First Supplemental Complaint asserts seven causes of action: (1)  
10 Violation of the Refugee Act (on behalf of all Plaintiffs, including the Class, against  
11 all Defendants), alleging that “Defendants’ suspension of the USRAP violates the  
12 Refugee Act, including 8 U.S.C. §§ 1182 and 1157(c)(2)(A),” Dkt. No. 56 ¶¶ 229–233;  
13 (2) Violation of the Administrative Procedure Act (APA) (on behalf of all Plaintiffs,  
14 including the Class, against the Agency Defendants), alleging that “Defendants’  
15 actions taken to implement the [USRAP EO]” violate the APA, *id.* ¶¶ 234–238; (3)  
16 Violation of the *Accardi* Doctrine and APA (on behalf of Plaintiffs HIAS, CWS,  
17 LCSNW, Esther, Josephine, and the Class, against the Agency Defendants),  
18 alleging that “Defendants’ suspension of the FTJ process violates agency  
19 procedures, including those at 8 C.F.R. § 207.7,” and that this “failure to comply  
20 with applicable regulations” violates the APA, *id.* ¶¶ 239–241; (4) Violation of the  
21 Fifth Amendment Due Process Clause (on behalf of Plaintiffs Esther and the FTJ  
22 Petitioner Subclass, against all Defendants), alleging that “Defendants’ suspension  
23 of the USRAP violates Plaintiff Esther and the FTJ Petitioner Subclass’s due

process rights” by depriving their “statutorily created entitlement to benefits,” *id.* ¶¶ 242–244; (5) Violation of the APA and INA (on behalf of all Plaintiffs, including the Class, against the Agency Defendants), alleging that the Funding Suspension and Funding Termination violate the APA, *id.* ¶¶ 245–250; (6) Violation of the *Accardi* Doctrine and Administrative Procedure Act (on behalf of all Plaintiffs, including the Class, against the Agency Defendants), alleging that the Funding Suspension and Funding Termination violate “agency policy and regulation, including those at 45 C.F.R. § 400.1 *et seq.*,” and that this “failure to comply with applicable regulations” violates the APA, *id.* ¶¶ 251–253; and (7) Violation of the Separation of Powers (on behalf of all Plaintiffs, including the Class, against all Defendants), alleging that “President Trump’s Foreign Aid Executive Order and Defendants’ implementation of that Order, including the State Department’s Termination Notices and Suspension Notices and the *Sub Silentio* Suspension, violate the constitutional principle of the separation of powers,” *id.* ¶¶ 254–257.

Finally, one fact not pled in the complaint merits mention. When the complaint was filed, Plaintiff Josephine was in South Africa, awaiting travel to the United States as the follow-to-join (FTJ) beneficiary of her mother, Plaintiff Esther, the sole representative of the proposed FTJ Petitioner Subclass. *See id.* ¶¶ 143–150, 239–244. Since then, Esther’s petition has been processed, and Josephine has been admitted into the United States. *See Dkt. No. 93 at 6.* This fact is not disputed. *See Dkt. Nos. 115 at 24; 130 at 13.* This development bears on the Government’s mootness challenge to the due process claim but does not render the broader claims

moot for the reasons addressed in the Court's Class Certification Order issued concurrently with this order.

### 3. DISCUSSION

### 3.1 Legal standard.

### **3.1.1 Fed. R. Civ. P. 12(b)(1).**

The Court must dismiss a complaint under Rule 12(b)(1) if it lacks subject-matter jurisdiction. Fed. R. Civ. P. 12(b)(1). A Rule 12(b)(1) jurisdictional attack may be facial, in which case the defendant asserts the allegations in the complaint, accepted as true, fail to invoke federal jurisdiction, or factual, in which case the defendant disputes the truth of the complaint. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). The court “resolves a facial attack” by “[a]ccepting the plaintiff’s allegations as true,” “drawing all reasonable inferences in the plaintiff’s favor,” and “determin[ing] whether the allegations are sufficient as a legal matter to invoke the court’s jurisdiction.” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). In a factual attack, “[t]he Court need not presume the truthfulness of the plaintiff’s allegations” and may “review evidence beyond the complaint.” *Safe Air*, 373 F.3d at 1039.

The Government argues that the complaint fails to establish jurisdiction even with all the allegations accepted as true. This makes their challenge “facial” rather than “factual.” This conclusion is not affected by the Government’s mootness challenge (*infra* § 3.5) based on a factual assertion not contained in the complaint: that Plaintiff Esther’s FTJ petition has been processed during the pendency of this

1 case. This is because the parties do not dispute that Esther's FTJ petition was  
2 processed, *see* Dkt. Nos. 115 at 24, 130 at 13, and where the allegations in a  
3 complaint are "controverted by *undisputed* facts in the record," a court can assume  
4 the truth of the undisputed facts without converting a facial analysis into a factual  
5 one. *See Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987) (emphasis  
6 added).

7       **3.1.2 Fed. R. Civ. P. 12(b)(6).**

8       The Court will grant a Rule 12(b)(6) motion if the complaint fails to allege  
9 "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v.*  
10 *Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the  
11 plaintiff pleads factual content that allows the court to draw the reasonable  
12 inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*,  
13 556 U.S. 662, 678 (2009). The plausibility standard is less than probability, "but it  
14 asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.*  
15 When considering a motion to dismiss, the Court accepts factual allegations pled in  
16 the complaint as true and construes them in the light most favorable to the  
17 plaintiff. *Lund v. Cowan*, 5 F.4th 964, 968 (9th Cir. 2021). But courts "do not  
18 'assume the truth of legal conclusions merely because they are cast in the form of  
19 factual allegations.'" *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (quoting  
20 *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)). Thus, "conclusory  
21 allegations of law and unwarranted inferences are insufficient to defeat a motion to  
22 dismiss." *Id.* (quoting *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004)).  
23

1           **3.2 Plaintiffs do not seek impermissible injunctive relief against the**  
**President.**

2           To begin, the Government argues that Plaintiffs' claims against President  
3           Trump must be dismissed because the Court lacks authority to enjoin the President.  
4           Dkt. No. 115 at 15–16. On this basis, they move to “dismiss Plaintiffs’ First,  
5           Second,<sup>1</sup> Fourth, and Seventh Claims to the extent they apply to the President.” *Id.*

6           It is true that courts generally lack authority to enjoin the President in the  
7           performance of official duties.<sup>2</sup> But Plaintiffs do not seek such relief. The only relief  
8           that Plaintiffs seek against the President himself is a *declaratory judgment* that the  
9           USRAP EO is ultra vires. As the Court explained when issuing its First Injunction,  
10          district courts have jurisdiction to declare executive orders unlawful and to enjoin  
11          sub-Presidential Executive Branch officials from carrying out unlawful orders. *See*  
12          Dkt. No. 45 at 18–20 (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579,  
13          587–89 (1952); *Clinton v. Jones*, 520 U.S. 681, 703 (1997); *Hawaii v. Trump*, 859  
14          F.3d 741, 788 (9th Cir. 2017); *Sierra Club v. Trump*, 929 F.3d 670, 696–97 (9th Cir.  
15          2019); *Murphy Co. v. Biden*, 65 F.4th 1122, 1130 (9th Cir. 2023)).

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17          <sup>1</sup> Plaintiffs assert their second claim only against the Agency Defendants, not the  
18          President. The Court assumes its inclusion here is an error.

19          <sup>2</sup> Defendants slightly overstate this rule, omitting the phrase “in general” from their  
20          citation to governing authority. *See Franklin v. Massachusetts*, 505 U.S. 788, 802–  
21          03 (1992) (“[I]n general, ‘this court has no jurisdiction of a bill to enjoin the  
22          President in the performance of his official duties.’”). The Supreme Court and Ninth  
23          Circuit have referred to injunctive relief against the President as “extraordinary,”  
24          but not necessarily forbidden. *See id.; Hawaii v. Trump*, 859 F.3d 741, 788 (9th Cir.  
25          2017), vacated on other grounds, 583 U.S. 941 (2017) (“[I]njunctive relief against the  
26          President . . . is extraordinary, and should . . . raise[ ] judicial eyebrows.”). Because  
27          Plaintiffs do not in fact seek such relief, this case does not require the Court to  
28          define the outer bounds of its equitable powers.

1 Because Plaintiffs seek only declaratory relief against the President, the  
2 Court declines to dismiss their claims against him.

3 **3.3 Plaintiffs have adequately pled that Defendants violated the INA.**

4 The Government argues that “Plaintiffs’ First, Third, and Seventh Claims are  
5 not plausible because, as the Ninth Circuit recently clarified, the President’s  
6 suspension of the USRAP was valid under 8 U.S.C. § 1182(f).” Dkt. No. 115 at 16  
7 (citing *Pacito v. Trump*, No. 25-1313 (9th Cir. Apr. 21, 2025)).

8 At the start, the Court notes that the Ninth Circuit’s partial stay does not, as  
9 the Government represents, “clarif[y] . . . the President’s suspension of the USRAP  
10 was valid.” *Id.* The Ninth Circuit’s order discussed neither the Government’s duties  
11 under the Refugee Act nor the outer limits of the President’s authority under  
12 Section 1182(f). And in any case, the Circuit’s “predictive analysis” of Plaintiffs’  
13 likelihood of success on the merits—issued in an emergency interlocutory posture—  
14 does not “forever decide the merits of the parties’ claims.” See *E. Bay Sanctuary  
Covenant v. Biden*, 993 F.3d 640, 661 (9th Cir. 2021).

16 On a substantive level, the Government offers two arguments why the  
17 USRAP EO, Agency Suspension, Funding Suspension, and Funding Termination do  
18 not violate the INA as amended by the Refugee Act: first, that the Refugee Act  
19 confers neither rights upon refugees nor obligations upon the Government; and  
20 second, to the extent the Refugee Act does create rights and obligations, they are  
21 statutorily circumscribed by the President’s authority under Section 1182(f). The  
22 Court addresses these arguments in turn.

1           **3.3.1     The Refugee Act imposes duties upon the Government, and  
2                 Plaintiffs plausibly allege the Government breached them.**

3           The Government argues that “[t]he Refugee Act . . . does not mandate *any*  
4           refugee admissions[.]” Dkt. No. 115 at 17 (emphasis in original). The Court  
5           disagrees.

6           The Constitution vests Congress with the power to set immigration policy.  
7           See U.S. Const. art I, §§ 1, 8, cl. 4. “[O]ver no conceivable subject is the legislative  
8           power of Congress more complete[.]” *Fiallo v. Bell*, 430 U.S. 787, 792 (1977). In  
9           passing the Refugee Act of 1980, Congress expressed a clear intent “to provide a  
10          *permanent and systematic* procedure for the admission to this country of  
11          refugees . . . and to provide comprehensive and uniform provisions for the effective  
12          resettlement and absorption of those refugees who are admitted.” Pub. L. No. 96-  
13          212, § 101(b), 94 Stat. 102 (emphasis added). This language is unequivocal.

14          Equally unequivocal are the statutory requirements created by the Refugee  
15          Act that mandate both refugee admissions and the provision of resettlement  
16          support. See 8 U.S.C. § 1157(a)(3) (requiring that admissions into the United States  
17          “shall be allocated among refugees of special humanitarian concern”); *id.* § 1157(a),  
18          (b), (d), (e) (obligating the President, annually, to determine the number of refugees  
19          to admit in the upcoming fiscal year); *id.* § 1157(c) (stating that FTJ beneficiaries—  
20          i.e., spouses or unmarried minor children of resettled refugees—are “entitled to the  
21          same admission status” as their family members, who can petition on their behalf);  
22          *id.* § 1522 (requiring that resettlement support “shall” be provided “to the extent of  
23

1 available appropriations" and setting forth private-public scheme to deliver such  
2 support); *see generally* Dkt. Nos. 45 at 7–8; 78 at 18–24.

3       The Court has already addressed, and rejected, the statutory arguments  
4 advanced by the Government to minimize or negate its duties under the Refugee  
5 Act. *See id.* at 21–30. The Government repeats its argument that  
6 Section 1157(c)(2)(A) does not entitle FTJ beneficiaries to admission but rather only  
7 to status "if and when [they] are admitted." Dkt. No. 115. This Court—and others—  
8 have rejected this position, which implausibly renders the statute a functional  
9 nullity. *See* Dkt. No. 45 at 52; *see also Doe v. Trump*, 288 F. Supp. 3d 1045, 1078–79  
10 (W.D. Wash. 2017).

11       The Government cites one out-of-circuit district court opinion for the  
12 proposition that "[Section] 1157 confers discretionary authority to admit refugees,  
13 including 'discretion over whether to implement this provision at all.'" Dkt. No. 115  
14 at 18 (quoting *Doe 1 v. Jaddou*, \_\_ F. Supp. 3d \_\_, 2025 WL 327368, at \*3–4 (D. Md.  
15 Jan. 29, 2025)). But that case is readily distinguishable—there, individual plaintiffs  
16 sought mandamus to force the Government to process their refugee applications.  
17 Here, by contrast, Plaintiffs challenge Government actions that entirely dismantle  
18 USRAP and abandon the duties established by the Refugee Act. The distinction  
19 matters. This Court need not decide whether individual refugees have enforceable  
20 rights under the Refugee Act. What is clear is that the Government has duties  
21 under the Act, and enforcing those duties is what Plaintiffs seek.

22       In sum, the Court rejects any contention that the INA does not obligate the  
23 Government to process, admit, and resettle refugees. And Plaintiffs' complaint

1 adequately alleges that the USRAP EO, Agency Suspension, Funding Suspension,  
2 and Funding Termination—individually and together—breached that obligation.

3           **3.3.2     The President's delegated authority under Section 1182(f),  
4                   while broad, does not authorize the total abandonment of  
5                   the Government's duties under the Refugee Act.**

6           The Government characterizes Section 1182(f), effectively, as a kill-switch,  
7 capable, when activated, of nullifying the Government's statutory obligations under  
the Refugee Act. The Court disagrees.

8           Section 1182(f) provides, in relevant part:

9           Whenever the President finds that the entry of any aliens or of any class  
10          of aliens into the United States would be detrimental to the interests of  
11          the United States, he may by proclamation, and for such period as he  
12          shall deem necessary, suspend the entry of all aliens or any class of  
aliens as immigrants or nonimmigrants, or impose on the entry of aliens  
any restrictions he may deem to be appropriate.

13          8 U.S.C. § 1182(f). In *Trump v. Hawaii*, the Supreme Court addressed the scope of  
14          Presidential authority under Section 1182(f). 585 U.S. 667 (2018). It held that the  
15          text of Section 1182(f) “exudes deference” to the President, “vests [him] with ample  
power to impose entry restrictions in addition to those elsewhere enumerated in the  
16          INA,” and fully “entrusts to the President the decisions whether and when to  
17          suspend entry,” “for how long,” and “on what conditions.” *Trump v. Hawaii*, 585  
18          U.S. 667, 684 (2018) (citation modified). This delegation of authority is, no doubt,  
19          substantial.

20           And yet, it is not without limits. In *Trump v. Hawaii*, the Supreme Court  
21          accepted plaintiffs’ “structural argument” that Section 1182(f) “does not give the  
22          President authority to countermand Congress’s considered policy judgments.” *Id.* at  
23

1 688. More to the point, *Trump v. Hawaii* was decided on the explicit assumption—  
2 which this Court likewise adopts—“that § 1182(f) does not allow the President to  
3 expressly override particular provisions of the INA.” *Id.* at 689 (upholding  
4 Presidential Proclamation because plaintiffs did not identify a conflict between the  
5 Proclamation and the INA). This case is distinguishable on precisely this issue.

6 This Court has already found that the complete, indefinite suspension of  
7 USRAP—the program by which the Government fulfills its statutory duties under  
8 the Refugee Act—countermands not only the INA statutory provisions discussed  
9 above (*supra* § 3.3.1), but also the considered policy judgments of Congress. *See* Dkt.  
10 No. 45 a 24–26. In passing the Refugee Act, Congress “declare[d] that it is the  
11 historic policy of the United States to respond to the urgent needs of persons subject  
12 to persecution in their homelands”—and to fulfill this policy, Congress sought to  
13 “provide a permanent and systematic procedure” for refugee resettlement.  
14 Pub. L. No. 96-212, § 101(a)–(b), 94 Stat. 102. When the President, through the  
15 USRAP EO, effectively subordinated this Congressional policy interest in refugee  
16 resettlement to countervailing Executive policy interests in, among other things,  
17 “appropriate assimilation” (*see* USRAP EO § 2), he impermissibly “countermand[ed]  
18 Congress’s considered policy judgment.” *See Trump v. Hawaii*, 585 U.S. at 688.

19 To be sure, Section 1182(f) authorizes the President—upon satisfying its  
20 statutory conditions—to suspend the entry of “any aliens or of *any class* of aliens”  
21 into the United States. Whether the term “class” can be reasonably construed to  
22 include *all* “refugees” as defined at 8 U.S.C. § 1101(a)(42)—a statutory construction  
23 that sets up a troubling contradiction with the “permanent and systematic”

1 language of the Refugee Act—is an open question. But this Court need not resolve  
2 that question because, as the Court previously found, the USRAP EO does not  
3 actually announce a “suspension” of the kind plausibly authorized by Section  
4 1182(f). *See Dkt. No. 45 at 26–28* (analyzing and applying the definition of  
5 “suspension”).

6 When invoking Section 1182(f), while the President need not “prescribe in  
7 advance a fixed end date” for entry restrictions—which would be impractical or  
8 impossible in some cases—there must be some temporal limitation. *Trump v.*  
9 *Hawaii*, 585 U.S. at 687 (reasoning that a President “may link the duration of  
10 th[e]restrictions [on entry], implicitly or explicitly, to the resolution of the triggering  
11 condition”). Indeed, that is law of the Circuit: any valid invocation of Section 1182(f)  
12 must “have an endpoint.” *Doe #1 v. Trump*, 957 F.3d 1050, 1065 (9th Cir. 2020)  
13 (holding that Presidential Proclamation suspending entry on immigrant visas  
14 pending the “diminishment of uncompensated healthcare costs” was invalid under  
15 Section 1182(f) because “the Proclamation’s perfunctory time limitations do not  
16 comport with the textual limits of § 1182(f”)). And while it is true that the Ninth  
17 Circuit later “re-examin[ed] the merits” of *Doe #1 v. Trump* in a subsequent  
18 decision, that decision was vacated. *See Doe #1 v. Trump*, 984 F.3d 848 (9th Cir.  
19 2020), *vacated*, *Doe #1 v. Biden*, 2 F.4th 1284, 1285 (9th Cir. 2021). The parties do  
20 not dispute that *Doe #1 v. Trump*, 957 F.3d 1050 (9th Cir. 2020), is binding  
21 precedent. *See Dkt. No. 45 at 24 n.5.*

22 In short, the Court finds that the USRAP EO lacks the express or implied  
23 temporal limitation required to qualify as a valid “suspension” under Section

1 1182(f). Apart from executive fiat, it identifies no triggering condition to “render the  
2 limitation feasibly temporary.” *Doe #1 v. Trump*, 957 F.3d at 1065–66. Like the  
3 unlawful proclamation in *Doe #1 v. Trump*, it cites broad, long-term policy concerns  
4 without suggesting how they might be resolved or how the suspension relates to  
5 addressing them. And it is entirely unclear how a vague notion such as “appropriate  
6 assimilation”—a concern arguably at odds with core constitutional principles of  
7 democratic pluralism and equal protection—could ever lend itself to a clear,  
8 objective resolution.

9 Thus, the Court finds that the USRAP EO does not “suspend” entry “for [a]  
10 period” as authorized by Section 1182(f). Instead, it functionally nullifies the policy  
11 judgments and statutory mandates set forth in the Refugee Act. Nor does the  
12 Government’s invocation of 8 U.S.C. § 1185(a)(1), *see* Dkt. No. 115 at 16, fare any  
13 better, as Section 1185(a)(1) likewise does not empower the President to abandon  
14 his statutory and constitutional obligations and nullify the will of Congress as set  
15 forth in the Refugee Act.

16 **3.4 Plaintiffs have adequately pled their separation-of-powers claim.**

17 The Government argues that Plaintiffs’ separation-of-powers claim should be  
18 dismissed because “the Supreme Court has ‘long recognized the power to expel or  
19 exclude aliens as a fundamental sovereign attribute exercised by the Government’s  
20 political departments largely immune from judicial control.’” Dkt. No. 115 at 19  
21 (quoting *Fiallo*, 430 U.S. at 792).

1        This argument fails for two reasons. First, neither the President’s statutory  
2 authority under the INA nor his inherent authority under the Constitution permits  
3 him to subvert the express will of Congress. *See In re Aiken Cnty.*, 725 F.3d 255, 267  
4 (D.C. Cir. 2013) (J. Kavanaugh) (“It is no overstatement to say that our  
5 constitutional system of separation of powers would be significantly altered if we  
6 were to allow executive . . . agencies to disregard federal law. . . . Our decision today  
7 rests on the constitutional authority of Congress, and the respect that the Executive  
8 and the Judiciary properly owe to Congress in the circumstances here.”).

9        Second, and more importantly, the Government mischaracterizes the claim.  
10      The gravamen of Plaintiffs’ separation-of-powers claim is that the Funding  
11 Suspension and Funding Termination are unlawful because the “Constitution  
12 grants the power of the purse and the power to legislate exclusively to Congress”  
13 and “[a]bsent congressional authorization, the Executive Branch may not  
14 redistribute or withhold properly appropriated funds in order to effectuate its own  
15 policy goals.” *Id.* ¶¶ 255, 257; *see also City & Cnty. of San Francisco v. Trump*, 897  
16 F.3d 1225, 1235 (9th Cir. 2018) (“Because Congress did not authorize withholding of  
17 funds, the Executive Order violates the constitutional principle of the Separation of  
18 Powers.”). The Government’s appeal to the President’s “power to expel or exclude  
19 aliens” is inapposite because it fails to address the agency actions at the heart of  
20 this claim: the Funding Suspension and Funding Termination.

21        The Government addresses the substance of Plaintiffs’ actual claim only in  
22 its reply brief, arguing that Section 1182(f) and the President’s foreign-affairs  
23 powers authorize him to “manage and restrict foreign aid.” Dkt. No. 132 at 12. This

1 late-levied argument is unpersuasive. The Foreign Aid EO calls for a pause in  
2 “foreign development assistance.” It says nothing about refugees or USRAP. And  
3 the Government gives no explanation why the Foreign Aid EO, or the President’s  
4 foreign-affairs powers, is relevant to statutory resettlement programs that Congress  
5 has expressly characterized as “domestic”—in other words, not a form of “foreign  
6 aid.” *See* 8 U.S.C. § 1522(a)(3) (“domestic assistance” to refugees). The Court thus  
7 rejects the Government’s request to dismiss this claim.

8           **3.5 Plaintiffs have adequately pled their due process claim, and the**  
9           **claim remains justiciable.**

10           The Government offers three arguments why the Court should dismiss  
11 Plaintiffs’ due process claim. Dkt. No. 115 at 24.

12           First, the Government argues that “this claim is moot because the Plaintiffs  
13 pressing it—Plaintiffs Esther and Josephine—received the relief they sought.” *Id.*  
14 The Court addresses this argument in its Class-Certification Order (issued  
15 concurrently), concluding that because Esther’s claim is inherently transitory, the  
16 processing of her FTJ petition does not render the claim moot. And under the law of  
17 the Ninth Circuit, this Court is bound to consider the application of the inherently  
18 transitory exception to mootness before dismissing a putative class action as moot.  
19 *See Wade v. Kirkland*, 118 F.3d 667 (9th Cir. 1997).

20           Second, the Government argues that “there is no entitlement to admission for  
21 following-to-join beneficiaries.” Dkt. No. 115 at 24. The Court has already rejected  
22 this argument. Dkt. No. 45 at 52.

1           Third, the Government argues that “principal refugees already present inside  
 2 the United States do not have a liberty interest in the admission of family  
 3 members.” Dkt. No. 115 at 24. The Government cites *Muñoz* for the proposition that  
 4 a “citizen does not have a fundamental liberty interest in her noncitizen spouse  
 5 being admitted to the country.” *Id.*; see *Dep’t of State v. Muñoz*, 602 U.S. 899, 909  
 6 (2024). But as the Court already explained, *Muñoz* is inapposite. See Dkt. No. 45  
 7 at 51–52. Whereas *Muñoz* dealt with a *substantive* due process claim asserting a  
 8 fundamental liberty interest in the admission of one’s foreign-national spouse into  
 9 the country, Esther and the FTJ Petitioner Subclass assert a *procedural* due process  
 10 claim alleging deprivation of a statutorily created benefit without due process. See  
 11 *Khachatryan v. Blinken*, 4 F.4th 841, 855 (9th Cir. 2021) (procedural due process  
 12 rights attach to interests arising from “nonconstitutional law, such as a statute”).  
 13 This argument thus misses the mark.

14           The Court concludes that Plaintiffs have adequately pled their due process  
 15 claim.

16           **3.6 Plaintiffs have established the Court’s jurisdiction over their APA  
 17 claims, which are not breach-of-contract claims subject to the  
 18 exclusive jurisdiction of the Court of Federal Claims.**

19           The Government rehashes its thrice rejected argument that Plaintiffs’ APA  
 20 claims amount to no more than “disguised breach-of-contract claims” subject to the  
 21 exclusive jurisdiction of the Court of Federal Claims. Dkt. No. 115 at 20. Having  
 22 explained the fault in this position three times, the Court addresses it here only  
 23 briefly. See Dkt. Nos. 45 at 38–41; 79 at 8–14, 30–33; 104 at 5–6.

1       The organizational Plaintiffs do not seek damages for breach of their  
2 cooperative agreements. *See generally* Dkt. No. 56 at 47–48 (relief requested).  
3 Rather, they seek to set aside the Agency Suspension, Funding Suspension, and  
4 Funding Termination and, in so doing, to compel the Agency Defendants to fulfill  
5 their statutory obligations, including to fund resettlement programs “to the extent  
6 of available appropriations.” *See* 8 U.S.C. § 1522(a)(1)(A); *see* Dkt. No. 56 at 48  
7 (seeking, as relief, to “Declare unlawful and set aside the Defunding of the  
8 USRAP”). The organizational Plaintiffs have no adequate remedy in the U.S. Court  
9 of Federal Claims—not only because the Claims Court lacks the power to order the  
10 relief sought, *see Richardson v. Morris*, 409 U.S. 464, 465 (1973), but also because  
11 the USRAP cooperative agreements are not the sort of “money-mandating”  
12 contracts that are enforceable under the Tucker Act. *See Rick’s Mushroom Serv.,*  
13 *Inc. v. United States*, 521 F.3d 1338, 1343 (Fed. Cir. 2008); *St. Bernard Par. Gov’t v.*  
14 *United States*, 134 Fed. Cl. 730, 735–36 (2017), *aff’d*, 916 F.3d 987 (Fed. Cir. 2019).

15       Moreover, it is not the organizational Plaintiffs alone who sue the Agency  
16 Defendants under the APA. The individual Plaintiffs—most of them refugees—also  
17 bring APA Claims. It goes without saying that these individuals are not suing for  
18 breach of any contract. There is no conceivable reason why the Tucker Act should  
19 bar their claims. Thus, for the fourth time, the Court rejects the Government’s  
20 Tucker Act-based jurisdictional attack on Plaintiffs’ APA claims.

1       **3.7 Plaintiffs' APA claims identify discrete, final, agency actions  
2 contrary to statutory and regulatory law.**

3           The Government argues that Plaintiffs' APA claims "suffer from three  
4 distinct and independently fatal problems: (1) they fail to identify a discrete agency  
5 action; (2) they fail to identify a final agency action; and (3) agency funding  
6 decisions are committed to agency discretion by law." Dkt. No. 115 at 25. But the  
7 Court has previously considered and rejected these arguments. *See* Dkt. No. 45 at  
8 32–38.

9           First, discreteness. The Government is correct that APA claims must  
10 challenge discrete agency actions, not seek "*wholesale* improvement" and, by  
11 extension, problematic judicial oversight of agency programs. *See Lujan v. Nat'l  
12 Wildlife Fed'n*, 497 U.S. 871, 891 (1990). The Government is incorrect, however,  
13 that Plaintiffs seek such impermissible relief. As Plaintiffs explain: "In seeking a  
14 return to the status quo, Plaintiffs challenge two sets of time-limited, specific  
15 agency actions: the suspension of USRAP-related refugee case processing, decisions,  
16 and admissions; and the suspension and termination of federal funding to  
17 administer the USRAP." Dkt. No. 130 at 24. The Court finds that the Funding  
18 Suspension, Funding Termination, and Agency Suspension amount to sufficiently  
discrete agency actions to support APA review.

19           Second, finality. Agency action is considered "final"—and thus reviewable—  
20 only if it (1) marks "the consummation of the agency's decisionmaking process" and  
21 (2) is "one by which rights or obligations have been determined, or from which legal  
22 consequences flow." *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (citation  
23

1 modified). The Government asserts that the agency actions at issue—the Agency  
2 Suspension, Funding Suspension, and Funding Termination—were not “final”  
3 because they were temporary measures subject to future change. But virtually *all*  
4 agency actions can be characterized as temporary measures subject to future  
5 change. As the Court has already explained, what’s decisive is that “Defendants do  
6 not dispute that the [agency actions at issue] produce ‘legal consequences’ for  
7 USRAP nonprofit partners, refugees, and others.” *See* Dkt. No. 45 at 38. “Nor do  
8 they dispute that the Agency Suspension and Refugee Funding Suspension each  
9 represent the consummation of an internal administrative decision-making process,  
10 even if opaque.” *See id.* This challenge to the reviewability of Plaintiffs’ APA claims  
11 thus fails.

12 Third, discretion. The Government argues that APA review of Plaintiffs’  
13 funding-related claims is unavailable because the State Department’s decisions to  
14 suspend and terminate the organizational Plaintiffs’ agreements were “committed  
15 to agency discretion by law” within the meaning of 5 U.S.C. § 701(a)(2).  
16 Dkt. No. 115 at 27–28. But this exception to APA-reviewability applies only “where  
17 the substantive statute left the courts with ‘no law to apply,’” meaning that “the  
18 statute is drawn so that a court would have no meaningful standard against which  
19 to judge the agency’s exercise of discretion.” *Heckler v. Chaney*, 470 U.S. 821, 826–  
20 30 (1985) (citing *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410  
21 (1971) for its “no law to apply” standard). While this carveout generally precludes  
22 review of discretionary spending decisions as to lump-sum appropriations, it does  
23 not preclude APA review of spending decisions that “disregard statutory

1 responsibilities.” *Lincoln v. Vigil*, 508 U.S. 182, 193 (1993). As Plaintiffs rightly  
2 argue, “[t]hat is exactly the situation here: Plaintiffs allege that Defendants’  
3 funding decisions violate their responsibilities under the Refugee Act and related  
4 regulations.” Dkt. No. 130 at 26 (citing 8 U.S.C. § 1522(a)(1)(A); 45 C.F.R. § 400 et  
5 seq.). This challenge thus fails.

6 In sum, the Court rejects the Government’s challenge to the reviewability of  
7 Plaintiffs’ APA claims.

8 **4. CONCLUSION**

9 For the reasons explained above, the Court FINDS that Plaintiffs plausibly  
10 plead their claims and adequately establish the Court’s jurisdiction. The Motion to  
11 Dismiss is DENIED. Dkt. No. 115.

12 Dated this 30th day of July, 2025.

13   
14 Jamal N. Whitehead  
United States District Judge  
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